

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

ROBERT AND JANE NICHOLS, d/b/a  
NICHOLS LIVESTOCK,

Plaintiffs,

v.

CACTUS GROWERS, INC.,  
a/k/a CACTUS FEEDERS, INC.,

Defendant.

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CAUSE NO. CIV-11-114-F

**NOTICE OF REMOVAL**

**TO THE HONORABLE JUDGE OF SAID COURT:**

Defendant Cactus Growers, Inc., and putative defendant Cactus Feeders, Inc. (collectively “Cactus”) respectfully show the Court at follows:

1. This notice of removal is subject to, and without waiver of, Defendants’ impending motion to dismiss for lack of personal jurisdiction, among other defenses that will be timely asserted by Defendants in their responsive pleadings.

2. On or about January 18, 2011, an action was commenced against Defendants<sup>1</sup> in the District Court of Kiowa County, State of Oklahoma, entitled Robert and Jane Nichols, d/b/a Nichols Livestock v. Cactus Growers, Inc., a/k/a Cactus Feeders, Inc., bearing Cause No. CJ-11-5. Plaintiffs

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<sup>1</sup> Cactus Feeders, Inc., a Nevada corporation, is a separate legal entity from Cactus Growers, Inc., a Texas corporation. In Plaintiffs’ original Petition, Cactus Feeders, Inc. was incorrectly named as an a/k/a of Cactus Growers, Inc. The cattle in question were purchased by Cactus Growers, Inc. from Eastern Livestock Co., LLC. Cactus Feeders, Inc. had no involvement in the transaction in question.

seek damages against Defendants for an alleged breach of contract<sup>2</sup> and the trucking fees associated with hauling the livestock in question<sup>3</sup>.

3. Exhibit 1 attached hereto is the plaintiffs' original Petition and proof of service on file with the Kiowa County District Clerk pursuant to 28 U.S.C. §1446. Cactus first received notice and a copy of plaintiffs' original Petition by service on Cactus Growers, Inc., Bradley W. Hastings, through certified mail on January 24, 2011. Exhibit 2 attached hereto is a copy of the Kiowa County District Clerk's docket sheet as required by this Court's local rules. The exhibits attached hereto evidence the complete file for the Kiowa County lawsuit as of February 3, 2011.

4. As no other defendants have been named (and, obviously, no other defendants served), consent of other defendants to removal is not required. 28 U.S.C. §1446(a).

5. This Notice of Removal is filed within thirty (30) days of Cactus's first notice or receipt of plaintiffs' original Petition and is therefore timely filed pursuant to 28 U.S.C. §1446(b).

6. The above described action is a civil action of which this Court has original jurisdiction by diversity of the parties, as this case is between citizens of different states. Plaintiffs are citizens and residents of the State of Oklahoma. Cactus Growers, Inc. is a Texas corporation with its principal place of business in Amarillo, Texas. Cactus Feeders, Inc. is a Nevada corporation with its principal place of business in Amarillo, Texas.

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<sup>2</sup> Cactus Growers, Inc. interpled the remaining purchase price of the cattle in question, \$104,929.84, into the registry of the Amarillo Federal District Court in Cause No. 2:10-cv-00266-J, on November 19, 2010. Cactus Growers, Inc. paid Eastern Livestock Co., LLC a \$30 per head down payment for the subject cattle in July or August of 2010.

<sup>3</sup> Plaintiffs' original Petition claims trucking fees. However, the Cactus Growers - Eastern Livestock contract provided that the cattle were sold delivered to Cactus. And, the party that hauled the cattle in question is Jane, LLC, an Oklahoma limited liability company, which is *not* a party to the lawsuit.

7. Plaintiffs seek damages in an amount of not less than \$112,600.17, plus interest, costs and attorneys' fees.

8. Removal of a civil action from state court to federal court is governed by 28 U.S.C. §1441, et seq. Sections 1441(a) states:

Any civil action brought in a State Court of which the District Courts of the United States have original jurisdiction, may be removed by the Defendant or the Defendants, to which the District Court of the United States for the district and division embracing the place where such action is pending.

Title 28 of the United States Code, Section 1332 describes the diversity jurisdiction of the U. S. District Courts:

The District Court shall have original jurisdiction for all civil actions where the matter in controversy exceeds the sum or value of \$75,000, ... and is between -

(1) citizens of different states.

9. Therefore, it is apparent from the face of the petition that Plaintiffs claim damages of at least \$112,600.17, plus interest, costs and attorneys' fees, which exceeds the minimal jurisdictional sum or value of \$75,000.

10. Venue is proper in this district under 28 U.S.C. §1441(a) because the state court where the suit has been pending is located in this district.

11. Written notice of the filing of this Notice of Removal will promptly be given to all parties herein, and a copy of this Notice will be promptly mailed to the District Clerk of Kiowa County, Oklahoma.

12. Defendants do not believe that the Plaintiffs demanded a jury in the state-court suit.

13. For the information of the Court, Eastern Livestock Co., LLC, a Kentucky limited liability company with its principal place of business in New Albany, Indiana, was placed into involuntary bankruptcy in Indiana on December 6, 2010. (Case No. 10-93904-BHL-11, S. Dist. Ind.) An order for relief was entered on December 28 , 2010.

**WHEREFORE**, Defendants Cactus Growers, Inc. and Cactus Feeders, Inc. remove this action from the District Court of Kiowa County, Oklahoma to this Court on or about February 8, 2011, pursuant to 28 U.S.C. §1441.

Respectfully submitted,

LOVELL, LOVELL, NEWSOM & ISERN, L.L.P.  
Tim D. Newsom, OBA No. 20017  
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By: /s/ Tim D. Newsom  
Tim D. Newsom

ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF NOTICE OF FILING**

This is to certify that a true and correct copy of the foregoing Notice of Removal of this action was sent via certified mail, return receipt requested, to the District Clerk of Kiowa County, Oklahoma, on February 8, 2011.

This is to further certify that a true and correct copy of the foregoing Notice of Removal was served via certified mail, return receipt requested, on the following counsel of record for Plaintiffs on February 8, 2011.

Jack S. Dawson  
MILLER DOLLARHIDE, P.C.  
100 Park Avenue, Second Floor  
Oklahoma City, Oklahoma 73102

By: /s/ Tim D. Newsom  
Tim D. Newsom